

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2015 JAN 15 A 9:27

IN RE: AUBURN UNIVERSITY
DATA BREACH

)
)
)
)

CIVIL DIVISION
Docket No. 19-1-15-Wncv

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General") and Auburn University ("Respondent" or "the University") hereby agree to this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

BACKGROUND

1. Respondent Auburn is a public body corporate and instrumentality of the State of Alabama, created and existing by virtue of Section 266, Constitution of Alabama of 1901, and Section 16-48-1, et seq., Code of Alabama 1975. Auburn University is an institution of higher education.
2. On November 20, 2013, the University discovered a security vulnerability on a file server used by College of Business faculty to store miscellaneous files, including but not limited to homework assignments and lecture presentations.
3. The University investigated and discovered on February 4, 2014, 76 days after the security vulnerability was discovered, that Personally Identifiable Information was present on the file server.
4. The University then retained data breach counsel and a forensics firm, which determined that student Social Security numbers were exposed.

5. The State of Vermont was notified of the data security breach on March 19, 2014, 119 days after the security vulnerability was first discovered.

6. Failure to provide Preliminary Notice to the Attorney General of a Security Breach within 14 business days of the breach is a violation of Vermont's Security Breach Notification Act. 9 V.S.A. § 2435(b)(3)(B)(i).

7. Consumers whose data may have been compromised by the security breach were notified of the breach on March 20, 2014, 120 days after the vulnerability was first discovered.

8. Failure to notify consumers of a security breach in the most expedient time possible and without unreasonable delay, but not later than 45 days after discovery or notification of the breach, is a violation of Vermont's Security Breach Notice Act. 9 V.S.A. § 2435(b)(1).

9. The Attorney General alleges that upon discovering the security vulnerability, the University failed to act in the most expedient time possible and that the delay was not reasonable.

INJUNCTIVE RELIEF

Definitions

10. "Applicable Vermont Law" shall mean Chapter 62 of the Vermont Statutes Annotated as those chapters may from time to time be amended.

11. "Consumer" shall mean any person whose Personally Identifiable Information has been obtained and/or collected by the University.

12. "Effective Date" shall mean the date on which the University receives a copy of this Assurance duly executed in full by the University and the Vermont Attorney General.

13. "Personally Identifiable Information" shall have the same meaning as defined in 9 V.S.A. § 2430(5).

Legal Compliance Program

14. Upon discovering any security threat of the type known to lead to the unauthorized acquisition of electronic data; or receiving any information from any third-party, including a consumer, employee, financial institution or law enforcement entity, that unauthorized acquisition of electronic data may have occurred, the University will:

- a. retain counsel with expertise in addressing security breaches within five business days;
- b. if warranted, retain an outside forensic analysis firm within ten business days;
- c. unless a definitive determination is made that no breach involving Personally Identifiable Information of a Vermont resident has occurred, contact the Vermont Office of the Attorney General within 14 business days;
- d. unless a definitive determination is made that no breach has occurred or that misuse of the personal information is not reasonably possible, notify consumers of the breach within the most expedient time possible and not later than 45 days; and

- e. if the University determines that misuse of the personal information is not reasonably possible, provide the Attorney General a detailed explanation for that determination.

15. Within one hundred and eighty (180) days of the Effective Date of this AOD, Respondent shall engage in an internal audit of its policies and procedures to ensure that it is complying with Applicable Vermont Law.

16. Respondent will implement policies and procedures to ensure continued compliance with Applicable Vermont Law, including but not limited to procedures for notifying the Attorney General and consumers in the event of a future security breach.

17. This Legal Compliance Program shall include training as appropriate of all officers, managers, and employees of the University of their roles and responsibilities in ensuring that the University complies with the Applicable Vermont Law.

18. All appropriate officers and managers of the University shall be provided with a memorandum summarizing and explaining the content of this AOD.

19. Respondent shall comply with all provisions of Applicable Vermont Law.

ACCESS TO RECORDS

20. To determine or secure compliance with this Assurance of Discontinuance, on reasonable notice given to Respondent, subject to any lawful privilege:

- a. If requested, Respondent will produce copies of any books, ledgers, accounts, correspondence, memoranda and other documents and records relating to the subject matter of this Assurance of Discontinuance in the possession, custody, or control of Respondent.

- b. If requested, Respondent will submit written reports, under oath if requested, with respect to any matters contained in this Assurance of Discontinuance.

OTHER TERMS

21. The University agrees that this Assurance of Discontinuance shall be binding on the University.

22. The Attorney General hereby releases and discharges any and all claims relating to the violations of the Security Breach Notice Act described in this Assurance of Discontinuance.

23. Nothing in this Assurance of Discontinuance obviates the protections, including but not limited to immunity under Article I, Section 14 of the Alabama Constitution enjoyed by Auburn University as an instrumentality of the state of Alabama under Alabama law.

24. A future data security breach of the University shall not, alone, be evidence that Respondent violated this Assurance of Discontinuance.

25. The terms of this Assurance of Discontinuance shall expire 10 years from the Effective Date. The expiration of the terms of the Assurance of Discontinuance shall not be construed to relieve Auburn University from compliance with Applicable Vermont Law.

STIPULATED PENALTIES

26. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of any provision of paragraphs 14 to 20 of this Assurance of Discontinuance, then the parties agree that penalties to be assessed by

the Court for each act in violation of this Assurance of Discontinuance shall be \$10,000.

For purposes of this paragraph 26, the term "each act" shall mean: each violation of 9 V.S.A. §§ 2435, 2451-2480, or each day past any appropriate deadline in this Assurance of Discontinuance or in the Security Breach Notice Act during which the University fails to notify the Attorney General and consumers of a breach.

NOTICE

27. Respondent may be located at:

Timothy R. Boosinger, DVM, Ph.D.
Provost and Vice President for Academic Affairs
Office of the Provost
Auburn University
107 Samford Hall
Auburn, AL 36849-5108

28. Respondent shall notify the Attorney General of any change of business name or address within 30 business days.

SIGNATURE

In lieu of instituting an action or proceeding against the University, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Auburn, AL, this 15th day of December, 2014.

Auburn University

By: Timothy R. Boosinger
Timothy R. Boosinger, DVM, Ph.D., authorized agent

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 14th day of January, 2015.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Ryan Kriger
Ryan Kriger
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
rkriger@atg.state.vt.us
(802) 828-3170